

OHIO E.P.A.

BEFORE THE OHIO

APR 22 2016

ENTERED DIRECTOR'S JOURNAL ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Millersport Fertilizer Service, Inc. : Director's Final Findings
10221 Lancaster-Newark Road : and Orders
Millersport, Ohio 43046 :

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Millersport Fertilizer Service, Inc. ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§ 3753.08 and 3745.01.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondent and successors in interest liable under Ohio law. No change in ownership of Respondent or of the facility (as hereinafter defined) shall in any way alter Respondent's obligations under these Orders.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in ORC Chapter 3753 and the rules promulgated thereunder.

IV. FINDINGS

The Director of the Ohio EPA makes the following findings:

1. Respondent owns and operates a fertilizer retail facility located at 10221 Lancaster-Newark Road in Millersport, Ohio (Fairfield County). Anhydrous ammonia is stored and sold for use as an agricultural nutrient to local farmers. Anhydrous ammonia is a regulated substance listed in Ohio Administrative Code ("OAC") Rule 3745-104-04 and has the threshold amount of 10,000 pounds. Respondent stores approximately 250,000 pounds of anhydrous ammonia in two storage tanks (30,000 and 12,000 gallons) and eighteen 1,000 gallon nurse tanks.

2. Pursuant to OAC Rule 3745-104-05, an owner or operator of a stationary source which has more than a threshold quantity of a regulated substance in a process, shall comply with the requirements of OAC Rule 3745-104-06 by submitting a Risk Management Plan ("RMP") to U.S. EPA no later than June 21, 1999 and to Ohio EPA no later than January 3, 2000. Respondent submitted the RMP to Ohio EPA on July 13, 2007 and to U.S. EPA on October 30, 2007 stating all of the documentation was complete and that the facility's RMP program was being implemented.
3. On February 28, 2007, Ohio EPA conducted an initial RMP inspection at Respondent's facility and discovered eight RMP violations and that an RMP had not been submitted to U.S. EPA or Ohio EPA, DAPC. By letter dated March 15, 2007, Ohio EPA notified Respondent of the violations. Warning letters were issued on June 18, 2007 and September 19, 2007 requiring Respondent to come into compliance. On December 28, 2007, Director's Final Findings and Orders were issued to Respondent which required the facility to submit an RMP to U.S. EPA and pay a civil penalty of \$4,020.
4. On March 31, 2015, Ohio EPA conducted an RMP audit at Respondent's facility and determined that Respondent had:
 - (a) failed to maintain documentation for the data used to estimate the residential population potentially affected by the worst case and alternative release scenarios, in violation of OAC Rule 3745-104-15. Ohio EPA provided the population data to Respondent during the inspection. This is a repeat violation from the 2007 inspection.
 - (b) failed to use the most recent Census data to estimate the population potentially affected in the RMP, in violation of OAC Rule 3745-104-12. The RMP was updated and submitted to Ohio EPA with the most recent Census data. This is a repeat violation from the 2007 inspection.
 - (c) failed to maintain safety related information related to the substances, processes and equipment, in violation of OAC Rule 3745-104-17. Safe upper and lower limits of the process, maximum intended inventory, and codes and standards used to design, build and operate the process were unavailable. This is a repeat violation from the 2007 inspection.
 - (d) failed to conduct a hazard analysis every five years, in violation of OAC Rule 3745-104-18. A hazard analysis was conducted in 2007 after the initial audit and was required to be revalidated in 2012 to determine if the process is operated in a safe manner. This is a repeat violation from the 2007 inspection.
 - (e) failed to provide refresher training every three years to ensure the employees understand and adhere to the operating procedures of the process, in violation of OAC Rule 3745-104-20. Refresher training was

provided in 2007 after the initial inspection and required again in 2010 and 2013. This is a repeat violation from the 2007 inspection.

- (f) failed to prepare and implement procedures to maintain the on-going mechanical integrity of process equipment, in violation of OAC Rule 3745-104-21. Annual inspections on the storage and nurse tanks, as well as the associated equipment are required to be conducted to ensure the process is safe. An annual inspection has not been conducted since 2007. This is a repeat violation from the 2007 inspection.
 - (g) failed to conduct a compliance audit every three years, in violation of OAC 3745-104-22. A compliance audit was conducted in 2007 by Respondent and required again in 2010 and 2013. This is a repeat violation from the 2007 inspection.
 - (h) failed to coordinate the emergency action plan with the appropriate responding agencies, in violation of OAC Rule 3745-104-36. Respondent did not provide documentation that their emergency action plan was coordinated with the Fairfield County Local Emergency Planning Committee and the local fire department. This is a repeat violation from the 2007 inspection.
5. By letter dated April 27, 2015, Ohio EPA notified Respondent of the violations referenced in Finding 4 of these Orders. Guidance and examples of the required information was provided in the April 27, 2015 letter.
 6. On June 5, 2015 Respondent submitted documentation to abate the violations in Finding 4 (d), (e), and (g) of these Orders.
 7. By email on June 08, 2015, Ohio EPA notified Respondent that the outstanding violations needed to be abated no later than June 15, 2015. On June 16, 2015, a warning letter was to Respondent requesting the remaining documentation. Additional documentation was submitted by Respondent; however, the violations referenced in Findings 4(b), (c), (f), and (h) of these Orders have not been abated to date.
 8. The violations referenced in Findings 4(b), (c), (f), and (h) were abated in March 2016.
 9. The Director has given consideration to, and based his determination on, evidence related to the technical feasibility and economic reasonableness of complying with the following Orders and benefits to the people of the State to be derived from such compliance.

V. ORDERS

The Director hereby issues the following Orders:

1. Respondent shall continue to comply with the RMP regulations.
2. Pursuant to ORC § 3753.09, Respondent is assessed a civil penalty in the amount of eleven thousand five hundred dollars (\$11,500) in settlement of Ohio EPA's claim for civil penalties. Within thirty (30) days after the effective date of these Orders, Respondent shall pay \$11,500 in settle of Ohio EPA's claim for civil penalties which will be deposited into the Risk Management Plan (RMP) Fund (Fund 5420) established pursuant to ORC § 3753.05. Payment shall be made by an official check made payable to "Treasurer, State of Ohio" for \$11,500. The official check shall be submitted to Ohio EPA, Office of Fiscal Administration, Attention: Carol Butler, 50 West Town Street, P.O. Box 1049, Columbus, Ohio 43216-1049, together with the letter identifying the Respondent and the facility.

VI. TERMINATION

Respondent's obligations under these Orders shall terminate when Respondent certifies in writing and demonstrates to the satisfaction of Ohio EPA that Respondent has performed all obligations under these Orders, these obligations have been embedded in operation permits, and the Chief of Ohio EPA's Division of Air Pollution Control acknowledges, in writing, the termination of these Orders. If Ohio EPA does not agree that all obligations have been performed, then Ohio EPA will notify Respondent of the obligations that have not been performed, in which case Respondent shall have an opportunity to address any such deficiencies and seek termination as described above.

The certification shall contain the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate and complete."

This certification shall be submitted by Respondent to Ohio EPA and shall be signed by a responsible official of Respondent. For purposes of these Orders, a responsible official is as defined in OAC Rule 3745-33-03(D)(1) for a corporation, or a corporate officer who is in charge of a principal business function of Respondent.

VII. OTHER CLAIMS

Nothing in these Orders shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership or corporation; not a party to these Orders, for any liability arising from, or related to, the operation of Respondent's facility.

VIII. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to these Orders shall be undertaken in accordance with the requirements of all applicable local, State and federal laws and regulations. These Orders do not waive or compromise the applicability and enforcement of any other statutes or regulations applicable to Respondent.

IX. MODIFICATIONS

These Orders may be modified by agreement of the parties hereto. Modifications shall be in writing and shall be effective on the date entered in the journal of the Director of Ohio EPA.

X. NOTICE

All documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency
Division of Air Pollution Control
50 West Town Street, Suite 700
P.O. Box 1049
Columbus, Ohio 43216-1049
Attention: Sherri Swihart

or to such persons and addresses as may hereafter be otherwise specified in writing by Ohio EPA.

XI. RESERVATION OF RIGHTS

Ohio EPA and Respondent each reserve all rights, privileges and causes of action, except as specifically waived in Section XII of these Orders.

XII. WAIVER

In order to resolve disputed claims, without admission of fact, violation or liability, and in lieu of further enforcement action by Ohio EPA for only the violations specifically cited in these Orders, Respondent consents to the issuance of these Orders and agrees to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Respondent's liability for the violations specifically cited herein.

Respondent hereby waives the right to appeal the issuance, terms and conditions, and service of these Orders and Respondent hereby waives any and all rights Respondent may have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Respondent agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondent retains the right to intervene and participate in such appeal. In such an event, Respondent shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated, or modified.

XIII. EFFECTIVE DATE

The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

XIV. SIGNATORY AUTHORITY

Each undersigned representative of a party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such party to these Orders.

ORDERED AND AGREED:

Ohio Environmental Protection Agency



Craig W. Butler
Director

4/22/16
Date

AGREED:

Millersport Fertilizer Services, Inc.


Signature

4-14-2016
Date

JULIA E HOOPER
Printed or Typed Name

OWNER
Title